

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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GREGORY SIMICICH,

Plaintiff,

08-CV-6698 (LTS)(AJP)

-against-

ANSWER

THE LONG ISLAND RAILROAD COMPANY,

Defendant.
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S I R S :

Defendant, The Long Island Rail Road Company ("LIRR"), s/h/a LONG ISLAND RAILROAD COMPANY, by its attorney, J. DENNIS McGRATH, ESQ., answering the verified complaint of plaintiff, alleges, upon information and belief, as follows:

1. Denies the allegations contained in paragraphs "1" and "9" and refers all questions of law to this Court for its determination.
2. Denies the allegations contained in paragraph "3" but admits that at all times herein mentioned, the defendant had been and still is doing business in the County of New York, State of New York.
3. Denies the allegations contained in paragraph "6" but admits that on or about January 9, 2008 and at all times hereinafter mentioned, the defendant maintained and controlled the Hillside Maintenance Facility located in Queens, New York.
4. Denies the allegations contained in paragraphs "7", "8" and "10" of the plaintiff's complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

5. Any injuries suffered by plaintiff were caused solely by his own negligence and

not by any negligence of the answering defendant.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

6. Any injuries suffered by plaintiff were not caused by a negligent act or omission of the answering defendant or any individual acting under its direction or control.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

7. All risks, hazards and dangers alleged by plaintiff or otherwise involved in this action, if any, were known to plaintiff, were open, obvious, notorious and apparent, and the plaintiff assumed the risks thereof.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

8. Plaintiff failed to mitigate or otherwise act to lessen or reduce the damages alleged in the Complaint.

WHEREFORE, defendant demands judgment of this court dismissing the complaint in its entirety, plus the costs and disbursements of the action.

Dated: Jamaica, NY
August 27, 2008

Yours, etc.

J. DENNIS McGRATH, ESQ.
Acting General Counsel & Secretary
Attorney for Defendant

By: Karla R. Alston

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